

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 730 - SB 683**

February 16, 2019

**SUMMARY OF BILL:** Enhances the penalty for second and third convictions of driving under the influence (DUI) to a Class E felony with a minimum sentence of 11 months and 29 days. Increases the minimum sentence for fourth and fifth time DUI convictions to 11 months and 29 days.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – \$44,511,300 Incarceration\***

**Decrease Local Expenditures – \$5,308,100**

Assumptions:

*Second and Third Convictions of DUI:*

- Under current law, Tenn. Code Ann. § 55-10-402(a)(2), a second conviction of DUI is sentenced to serve at least 45 days in a county jail unless a judge orders an offender to participate in a substance abuse program. The successful completion of such a program will reduce the sentence to 25 days in a county jail.
- Under current law, Tenn. Code Ann. § 55-10-402(a)(3), a third conviction of DUI is sentenced to serve at least 120 in a county jail unless a judge orders an offender to participate in a substance abuse program. The successful completion of such a program will reduce the sentence to 65 days in a county jail.
- This analysis assumes 50 percent of offenders are ordered and successfully complete such substance abuse programs.
- This analysis assumes there was an average of 2,650 second time convictions and 850 third time convictions of DUI each year over the last five years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 293  $[(2,650 + 850) \times .0837]$  additional admissions for a total of 3,793  $(2,650 + 850 + 293)$ .

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- According to the DOC, 31.4 percent of offenders will re-offend within one year of their release. A recidivism discount of 31.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (3,793 offenders x .314 = 1,191 offenders).
- According to the DOC, the average operating cost per offender per day for calendar year 2019 is \$73.18.
- The average number of days served for a Class E felony is 1.28 years. While this legislation requires a minimum sentence of 11 months and 29 days, it is assumed these offenders will serve the average number of days for a Class E felony.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 1,301 [(3,793 offenders – 1,191 recidivism discount) x 50%] offenders admitted every year serving 1.28 years (467.52) days for an annualized increase in state incarceration expenditures of \$44,511,261 (\$73.18 x 467.52 x 1,301).

*Fourth and fifth Convictions of DUI:*

- Pursuant to Tenn. Code Ann. § 55-10-402(4), fourth and fifth convictions of DUI are sentenced as Class E felonies.
- The average number of days served for a Class E felony is 1.28 years.
- Any impact to state incarceration resulting from mandating that fifth and six time DUI convictions serve 11 months and 29 days is estimated to be not significant.

*Local Incarceration:*

- Enhancing second and third time DUI convictions will lead to a decrease in local incarceration costs.
- The proposed legislation will result in an estimated 1,301 additional DOC admissions each year, that would, in the absence of this legislation, be admitted to local jails for mandated sentences.
- The sentences of the estimated 50 percent of offenders ordered and to complete substance abuse programs will not be affected by the proposed legislation.
- This analysis assumes 75 percent of offenders are second time offenders and 25 percent are third time offenders.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- The proposed legislation will lead to a recurring decrease in local incarceration expenditures estimated to be \$5,308,080 [(1,301 x 75% x \$64 x 45 days)] + [(1,301 x 25% x \$64 x 120 days)].

*Courts, Public Defenders, and District Attorneys:*

- The proposed legislation does not create new offenses, and, therefore, will not increase the caseloads of the courts, public defenders, or district attorneys. The courts, public defenders, and district attorneys can accommodate any impact within their existing resources.

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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